

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

SEP 24 2001

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

MYERS BROTHERS, INC., and)
FIRST NATIONAL BANK IN OLNEY,)

Plaintiff,)

vs.)

AGCO, INC.,)

Defendant.)

No. 98 724 MJR

ORDER

This matter is before the Court on the Defendant's Motion to Strike David Payne as a Proposed Witness and Motion in Limine precluding the Testimony of David Payne, (Doc. 67). The Court has considered the Motion, the response thereto and the Defendant's reply, and for the reasons set forth below, the Motion is granted, in part and denied, in part.

As the pleadings fully set forth, this matter has had a protracted pretrial history. Originally, the Court entered a scheduling and discovery order, the deadlines of which have long passed. On September 13, 2001, the Court held a telephone conference to discuss the status of this matter in light of the late disclosure of the Plaintiff's expert. The Court made the determination during the conference call that a continuance of the trial was warranted, and set the matter for October 30, 2001. With this in mind, the Court is of the opinion that the Defendant will need sufficient time to retain an expert, if it determines such is necessary, and accordingly will allow the Plaintiff to tender Mr. Paine as its expert to the extent set forth below.

From the memoranda and arguments presented to the Court, it is clear that the Plaintiff intends to elicit testimony from Mr. Paine as to the Defendant's net worth and on an amount of

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punitive damages the jury should award. The Court agrees with the Defendant that the amount of punitive damages testimony is not proper. As the Defendant argues, the Seventh Circuit Court of Appeals has held, “[w]hen analyzing the relevance of proposed testimony, the district court must consider whether the testimony will assist the trier of fact with its analysis of any of the issues involved in the case.” *Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000).

Under the holdings of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Company, Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999), the district court is required to ensure that scientific testimony or evidence admitted is not only relevant, but reliable. *Daubert*, 509 U.S. at 589.

The Plaintiff offers Mr. Paine as an expert to testify as to his opinion of the monetary amounts he believes will materially affect the Defendant’s financial position. This is not the kind of evidence that will assist the jury with its analysis of the issues before it.

[T]here are no credentials that could qualify an individual as a punitive damages expert, primarily because the area of assessing punitive damages, implicative of various societal policies and lacking any basis in economics, rests strictly within the province of the jury and, thus, does not necessitate the aid of expert testimony. *See, Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111. S.Ct. 1032, 1047, 113 L.Ed.2d 1(1991)(Scalia, J., concurring)(“it has been the traditional practice of American courts to leave punitive damages (where the evidence satisfies the legal requirements for imposing them) to the discretion of the jury. . .”). Indeed, courts have characterized the jury’s assessment of punitive damages as “an almost unconstrained judgment or policy choice about the severity of the penalty to be imposed, given the jury’s underlying factual determinations about the defendant’s conduct.” *Atlas Food Sys. & Servs., Inc. v. Crane Nat’l Vendors, Inc.*, 99 F.3d 587, 594 (4th Cir. 1996). Under the guise of providing guidance to the jury, . . . [the plaintiff’s expert’s] report in effect thwarts the jury’s broad discretion. . . The Court has no reason to believe . . . [that the plaintiff’s expert], or any other expert for that matter, is more qualified than the average juror to make a straight forward determination whether to

punish. . . [the defendant] and if so, to what extent.


***Voilas v. General Motors, Corporation*, 73 F.Supp.2d 452, 464 (D.N.J. 1999).**

The issue of punitive damages has, and should remain within the jury's purview. The Court agrees that expert testimony with respect to the amount of damages, if any, necessary to punish a defendant invades the broad discretion of the jury and fails to satisfy the ***Daubert*** test of aiding the jury in its fact finding mission.

Accordingly, the Defendant's Motion to Strike David Payne as a Proposed Witness and Motion in Limine precluding the Testimony of David Payne, (Doc. 67), is granted with respect to testimony relating to the amount of punitive damages, if any should be awarded, and denied with respect to testimony of the Defendant's net worth. The Defendant is given up to and including October 20, 2001 to disclose any experts with respect to net worth testimony. Plaintiff is ordered to fully cooperate with the Defendant if it discloses such an expert in taking additional expert depositions.

IT IS SO ORDERED.

DATED: This 24th day of September 2001.


MICHAEL J. REAGAN
UNITED STATES DISTRICT JUDGE